

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 266
5525475

BETWEEN PAMELA JO SAROZ
Applicant
A N D FLOWER FEVA LIMITED
Respondent

Member of Authority: Rachel Larmer
Representatives: Jeremy Browne, Counsel for the Applicant
Damian Luiten, Director of Respondent
Investigation Meeting: On the papers
Date of Determination: 04 September 2015

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1] In a determination dated 18 August 2015¹ Ms Saroz succeeded on her claims against Flower Feva Limited (Flower Feva). Remedies were not fixed at that time due to insufficient information being available.

[2] Ms Saroz now seeks orders from the Authority.

What paid sick leave is Ms Saroz owed for her absence on 22 April 2012?

[3] Flower Feva is ordered to pay Ms Saroz \$140.25 for the sick leave she took on 22 April 2012. This has been calculated in accordance with s.71(1) HA03.

What is Ms Saroz owed for unused TOIL?

[4] Flower Feva is ordered to pay Ms Saroz \$960.71 (being equivalent to her relevant daily pay x 6.85 days) for time off in lieu (TOIL) accrued by her as at 19 May 2014 which Mr Luiten agreed to pay.

¹ [2015] NZERA Auckland 250.

What is Ms Saroz owed for outstanding public holidays entitlements?

[5] Flower Feva is ordered to pay Ms Saroz \$736.31 in accordance with s50 Holidays Act 2003 (HA03) for unpaid public holiday entitlements arising from the time and a half she should have but did not receive for the hours she actually worked on public holidays. This entitlement is calculated as per Ms Saroz's hourly rate as it applied on 19 May 2014.

[6] Flower Feva is ordered to pay Ms Saroz \$701.25 being five days alternative holiday entitlement arising under ss.56 & 57 HA03. This amount has been calculated as per s.61(2)(b)(i) HA03.

What is Ms Saroz owed for annual holiday pay arrears?

[7] Ms Saroz was not paid any annual holiday pay upon termination. The start date for calculating her annual holiday entitlements is 02 June 2009.

[8] Ms Saroz is owed 17.5 days accrued but unused annual holidays under s.24 HA03. Flower Feva is ordered to pay Ms Saroz \$2,454.38 calculated as per s.24(2) HA03.

[9] Flower Feva is ordered to pay Ms Saroz \$3,327.85 being 8% of her total gross earnings from her leave anniversary date of 02 June 2013 to her termination date of 19 May 2014. This has been calculated in accordance with s.25(1) HA03.

What KiwiSaver contributions is Ms Saroz owed?

[10] Ms Saroz as a KiwiSaver member is entitled to receive 3% employer KiwiSaver contributions from Flower Feva which it must deduct and remit to Inland Revenue Department (IRD) on her behalf.

[11] Flower Feva is ordered to pay Ms Saroz \$249.62 in unpaid KiwiSaver contributions.

What interest is Ms Saroz owed?

[12] Ms Saroz was awarded interest of 7.5% on her unpaid HA03 entitlements and unpaid KiwiSaver entitlements from 27 May 2014 until these amounts have been paid in full.

[13] Flower Feva is ordered to pay Ms Saroz interest of \$728.59 which is calculated up to the date of this determination. Flower Feva is also ordered to pay MS Saroz ongoing interest of \$1.56 per day (at rate of 7.5%) from 05 September 2015 until her HA03 and KiwiSaver entitlements have been paid in full.

Distress compensation

[14] The Authority records that in its substantive determination² it awarded Ms Saroz \$6,000 distress compensation under s.123(1)(c)(i) of the Employment Relations Act 2000.

Amounts awarded

[15] Flower Feva is ordered to pay Ms Saroz within 28 days of the date of this determination:

- a. \$140.25 unpaid sick pay;
- b. \$960.71 for TOIL;
- c. \$1,437.56 unpaid public holiday entitlements;
- d. \$5,782.23 unpaid annual holiday entitlements;
- e. \$249.62 unpaid employer KiwiSaver contributions;
- f. \$6,000 distress compensation;
- g. \$728.59 interest to date of this determination;
- h. \$1.56 interest per day from 05 September 2015 until the amounts in paragraph 16a, c, d, e have been paid to her.

What if any costs should be awarded?

[16] Ms Saroz as the successful party is entitled to a contribution towards her actual costs both in respect of the substantive and regarding the fixing of remedies.

² Supra.

[17] Ms Saroz has 7 days to file a costs memorandum and Flower Feva has 7 days within which to file a reply costs memorandum. The Authority is likely to adopt its usual notional daily tariff approach to costs. The current notional daily tariff is

[18] The parties are invited to identify any factors (including without prejudice except as to costs offers) which they say should result in the notional daily tariff being adjusted.

Rachel Larmer
Member of the Employment Relations Authority